

**INDEX**  
to  
**Defense Law Journal**

---

**1980**  
**Pocket Supplement**

•

References to Volumes 28 and 29

---

Publishers  
**THE ALLEN SMITH COMPANY**  
Indianapolis, Indiana 46202

I  
N  
D  
E  
X

## CONTENTS

---

	Page
Index of Articles .....	1
Index of Authors .....	4
Index of Subjects .....	5

Copyright ©1981  
THE ALLEN SMITH COMPANY  
Indianapolis, Indiana

MI

## INDEX OF ARTICLES

---

(References are to volume and page numbers)

### ACCIDENT AND HEALTH INSURANCE

- "Review of Recent Tort Trends" (William E. Knepper), 29—4
- "Statutes and Regulations Controlling Life and Health Insurance Claims Practices" (Franklin L. Best, Jr.) 29—115
- "The Role of the Life, Health & Accident Insurer's Medical Director in Extra-Contract Claims Litigation" (Guy O. Kornblum), 28—205

### ASSAULT

- "Review of Recent Tort Trends" (William E. Knepper), 29—23

### ATTORNEY AND CLIENT

- "Review of Recent Tort Trends" (William E. Knepper), 28—13; 29—12
- "The Case Against Guaranteed Verdict Agreements" (Larry Bodine), 29—237

### CASUALTY INSURANCE

- "Royal Globe v Superior Court: Its Impact on Litigation Involving Insurers" (Guy O. Kornblum), 29—355
- "The Case Against Guaranteed Verdict Agreements" (Larry Bodine), 29—233

### CIRCUMSTANTIAL EVIDENCE

- "The State of the Art and Products Liability" (Michael Weinberger), 28—30

### COMPARATIVE NEGLIGENCE

- "Review of Recent Tort Trends" (William E. Knepper), 28—2

### COMPROMISE AND SETTLEMENT

- "Review of Recent Tort Trends" (William E. Knepper), 29—17
- "Royal Globe v Superior Court: Its Impact on Litigation Involving Insurers" (Guy O. Kornblum), 29—355
- "Statutes and Regulations Controlling Life and Health Insurance Claims Practices" (Franklin L. Best, Jr.), 29—115
- "The Case Against Guaranteed Verdict Agreements" (Larry Bodine), 29—233

### CONTRACTS

- "Disclosure of Confidential Medical Information: Countervailing Pressures on Physicians" (Merrill G. Emerick), 28—393

### CONTRIBUTION AMONG TORTFEASORS

- "The Case Against Guaranteed Verdict Agreements" (Larry Bodine), 29—233

### CORPORATE MANAGEMENT LIABILITY

- "Review of Recent Tort Trends" (William E. Knepper), 29—20

### DAMAGES, PUNITIVE

- "Review of Recent Tort Trends" (William E. Knepper), 29—5

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### DEFAMATION

"Disclosure of Confidential Medical Information: Countervailing Pressures on Physicians" (Merrill G. Emerick), 28—393

### EXPERIMENTAL EVIDENCE

"Defense of a Railroad Crossing Accident Case" (D. Thomas Johnson), 29—461

### EXPERT EVIDENCE

"The State of the Art and Products Liability" (Michael Weinberger), 28—303

### EVIDENCE

"Should the States Adopt Rules Patterned after the Federal Rules of Evidence?" (A. Sherman Christensen), 28—101

### FEDERAL RULES OF EVIDENCE

"Should the States Adopt Rules Patterned after the Federal Rules of Evidence?" (A. Sherman Christensen), 28—101

### GOVERNMENTAL LIABILITY

"Review of Recent Tort Trends" (William E. Knepper), 28—5

### INSTRUCTIONS

"Jury Instructions, Pattern or Otherwise" (Graham Douthwaite), 29—335

"Review of Recent Tort Trends" (William E. Knepper), 29—13

### LEGAL MALPRACTICE

"Review of Recent Tort Trends" (William E. Knepper), 28—14; 29—13

### LIABILITY INSURANCE

"Royal Globe v Superior Court: Its Impact on Litigation Involving Insurers" (Guy O. Kornblum), 29—355

### LIFE INSURANCE

"Statutes and Regulations Controlling Life and Health Insurance Claims Practices" (Franklin L. Best, Jr.), 29—115

"The Role of the Life, Health & Accident Insurer's Medical Director in Extra-Contract Claims Litigation" (Guy O. Kornblum), 28—205

### LIMITATION OF ACTIONS

"Review of Recent Tort Trends" (William E. Knepper), 29—20

### MEDICAL MALPRACTICE

"Disclosure of Confidential Medical Information: Countervailing Pressures on Physicians" (Merrill G. Emerick), 28—393

"Review of Recent Tort Trends" (William E. Knepper), 28—8; 29—15

### MENTAL PAIN

"Review of Recent Tort Trends" (William E. Knepper), 29—4, 22

### MOTION PICTURES

"Defense of a Railroad Crossing Accident Case" (D. Thomas Johnson), 29—461

## INDEX OF ARTICLES

(References are to volume and page numbers)

### PREPARATION FOR TRIAL

"Defense of a Railroad Crossing Accident Case" (D. Thomas Johnson), 29—449

"Jury Instructions, Pattern or Otherwise" (Graham Douthwaite), 29—335

"The Role of the Life, Health & Accident Insurer's Medical Director in Extra-Contract Claims Litigation" (Guy O. Kornblum), 28—205

### PRIVACY

"Disclosure of Confidential Medical Information: Countervailing Pressures on Physicians" (Merrill G. Emerick), 28—393

### PRODUCTS LIABILITY

"Review of Recent Tort Trends" (William E. Knepper), 29—19

### PROFESSIONAL LIABILITY

"Review of Recent Tort Trends" (William E. Knepper), 29—14

### RAILROAD ACCIDENTS

"Defense of a Railroad Crossing Accident Case" (D. Thomas Johnson), 29—449

## INDEX OF AUTHORS

---

(References are to volume and page numbers)

**BEST, FRANKLIN L., JR.**

"Statutes and Regulations Controlling Life and Health Insurance Claims Practices,"  
29—115

**BODINE, LARRY**

"The Case Against Guaranteed Verdict Agreements," 29—233

**CHRISTENSEN, A. SHERMAN**

"Should the States Adopt Rules Patterned after the Federal Rules of Evidence,"  
28—101

**DOUTHWAITE, GRAHAM**

"Jury Instructions, Pattern or Otherwise," 29—335

**EMERICK, MERRILL G.**

"Disclosure of Confidential Medical Information: Countervailing Pressures on  
Physicians," 28-393

**JOHNSON, D. THOMAS**

"Defense of a Railroad Crossing Accident Case," 29—449

**KNEPPER, WILLIAM E.**

"Review of Recent Tort Trends," 28—1; 29—1

**KORNBLUM, GUY O.**

"The Role of the Life, Health & Accident Insurer's Medical Director in Extra-  
Contract Claims Litigation," 28—205

"Royal Globe v Superior Court: Its Impact on Litigation Involving Insurers,"  
29—355

**WEINBERGER, MICHAEL**

"The State of the Art and Products Liability," 28—303

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### A

#### ACCIDENT AND HEALTH INSURANCE

- anticipatory breach by insurer, 29—78
- collateral source issues, medical malpractice statutes, 28—68, 86
- disability coverage
  - accidental means causation, 29—4, 5, 74, 75
  - attending physician's statement, requirement, 28—123
  - evaluation of impairment, 28—123
  - permanency issues, 29—75
- federal court, jurisdictional amount, 29—85
- future benefits, lump-sum recovery, 29—4, 78
  - causation by accident or disease, 29—75
- medical evidence
  - permanency, 29—75
- statutes and regulations controlling claims practices
  - attorneys' fees of claimant, 29—133 to 135
  - authority to issue policies, 29—139 to 141
  - checklist, practices to avoid, 29—146 to 149
  - interest on payments withheld, 29—135 to 139
  - Model Act, 29—153 to 162
  - Model Regulation, 29—163 to 167
  - sanctions imposed for violation, 29—126 to 129
- tort liability, improper claims handling, 28—214, 219, 226, 401; 29—4, 73, 76 to 79, 87, 101, 102, 142 to 144, 146 to 149, 150, 335 to 376

#### ADMISSIONS AGAINST INTEREST

- changed conditions after accident, products liability, 28—430; 29—326
- cost award authorized by statutes, 29—182
- depositions, discovery
  - customary business procedures, 29—201
  - knowledge of danger admitted, 28—433, 437
- falsity of statements, defamation case, 28—485
- fraud action
  - absence of misrepresentations, 28—273
  - terms of release understandable, 28—273
- judicial admissions
  - attorney's statements, 29—243, 244
  - defective construction of residence, homebuilders' warranty case, 29—508
  - depositions, 28—485; 29—201
  - falsity of answers to interrogatories, 29—42
  - future damages not to be incurred, 28—96
  - liability admitted, 28—96, 297, 385, 488, 495; 29—316
  - pleadings, 28—297

(References are to volume and page numbers)

**ADMISSIONS AGAINST INTEREST (Continued)**

**judicial admissions (Continued)**

- privilege of communication, defamation case, 28—153
- requests for admissions, 29—459
- status as trespassers, 28—161
- stipulations, 28—488, 491; 29—302
- testimonial admissions, 29—206
- limitations period expired, 28—358
- settlement offers or advance payments, 29—253, 263, 265, 267
- statements, pretrial
  - accident facts, 29—36
  - activity inconsistent with disability claimed, 28—298
  - injury and disability facts, 29—59
  - insured's statements denying loss, 29—284

**AMNESIA**

- Dead Man's statute, amnesia not "incompetency," 29—317
- medical evidence, 28—350
- party's amnesia, effect on discovery rights, 28—41
- testimony at trial following claim, 28—351

**AMUSEMENT DEVICE ACCIDENTS**

- assumption of risk defense, 28—335, 342, 344
- automatic pitching machine, 28—338
- fencer's mask, 28—332
- golf training device, 28—344
- gym bar, 28—346
- hockey helmet, 28—345
- sliding board, 28—343
- trampoline, 28—344, 433

**ANIMAL LAW**

**dog cases**

- "harboring" of dog, definition, 28—54
- statutory liability, 28—54

**APPEAL**

**argument on appeal**

- abandonment of existing rule urged, 28—59, 180, 185, 188, 362, 365, 376, 423, 425, 435, 438, 454; 29—185, 277, 435, 442
- apportionment of negligence erroneous, 28—150, 163; 29—469
- burden of proof misapplied, 28—240, 249, 253, 346, 443, 463, 478; 29—276, 298, 412, 495
- clarification of law needed, 29—295, 298
- common-law rule controlling, 29—408
- constitutionality of statutes contested, 28—66 to 88, 280, 358, 456; 29—66, 76, 110, 295, 302, 313, 407, 417 to 423, 505
- constitutional rights denied, 29—198
- cost award improper, 29—181 to 195
- cross-examination unduly restricted, 29—216, 222
- dictum, reliance on, 29—81



## INDEX OF SUBJECTS

(References are to volume and page numbers)

### APPEAL (Continued)

#### argument on appeal (Continued)

- discovery improperly allowed or denied, 28—26 to 45; 29—56
- estoppel or waiver issues, 28—365
- evidence erroneously admitted or excluded, 28—250, 252, 255, 316, 350, 366, 375; 29—31, 34, 37, 41 to 50, 60, 63, 108, 208, 218, 239, 302, 305, 313 to 320, 341, 343, 346, 385, 399
- fault inapplicable, strict liability, 29—441
- inconsistency of verdicts, 29—414
- instructions erroneously given or refused, 28—137, 140, 142, 194, 240, 249, 253, 264, 284, 314, 346, 364, 376, 377, 383, 423, 435, 436, 443, 444, 450, 475, 480; 29—69, 206, 335, 346, 351, 384, 412
- insurable interest in stolen vehicles, 28—169
- judicial notice improperly refused, 29—388 to 392
- judicial notice improperly taken, 29—384, 389 to 399
- judicial restraint urged, 29—428
- jurisdiction lacking, 29—171, 295
- lack of notice, warranty action, 29—509
- limitation of actions issues, 29—492, 505, 507, 514 to 516
- mental anguish damages improper, 29—510
- misconduct of counsel, 29—215, 224 to 228
- new trial improperly ordered, 29—205
- prejudicial cross-examination, 28—268; 29—214, 223, 225, 228 to 230, 287
- privity lacking, warranty actions, 29—507, 513, 516, 517
- proximate cause not established, 28—51
- public policy, 28—243, 424, 426, 438; 29—96, 97, 261
- recognition of new cause of action urged, 28—180, 185, 188; 29—82, 93, 96, 426, 432, 446, 502
- response to jury during deliberations erroneous, 28—383
- separate trial wrongly denied, 29—247
- standard of care misapplied, 29—290
- statutes misconstrued, 28—356; 29—170, 173, 178 to 181
- strict liability applicable, 28—59, 454
- theories sustaining verdict, 28—375, 446, 450
- violation of statute, private action on, 29—358
- voir dire excessively restricted, 28—263
- voir dire improperly conducted, 28—263; 29—469 to 487
- weight of authorities, 29—492
- change in law during appeal, effect, 28—336, 377
- harmless error rule, 29—477, 482, 487
- intermediate appellate courts' authority, 28—187, 425, 454
- "invited error" rule, 29—221, 225 to 228
- judicial notice by appellate judges, 29—380, 383, 387 to 399
- premature appeals, 29—299
- record for appeal
  - arbitrator's decision, 29—298
  - certified issues, 29—95, 492
  - cost award, 29—181 to 195
  - damage issues, 28—498
  - directed verdict, 28—270

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### APPEAL (Continued)

#### record for appeal (Continued)

- discovery orders, 29—28 to 50, 56
- dismissal orders, 28—135, 150, 154, 157, 160, 180, 187, 353, 440, 453, 456;  
29—80, 89, 93, 169 to 181, 298
- "guaranteed verdict" agreements, 29—233 to 251
- instructions, 28—137, 140, 142, 264, 284, 364, 366, 375 to 377, 383, 423, 435,  
436, 443, 444, 450; 29—69, 205, 412
- medical malpractice, decision of panels, 29—173, 179, 180
- mistrial, motions for, 28—268; 29—473, 480
- negligence apportionment by jurors, 28—150, 163
- offer of proof, 29—63, 298, 300
- special issues to jury, 28—163; 29—414
- stipulations, 28—156, 167, 168, 192; 29—491
- voir dire examination, 28—263; 29—471, 473
- waiver of error, 28—447; 29—46, 192, 221, 222, 323, 335, 384, 480, 486
- scope of review, 28—66, 71, 77, 97, 98, 150, 266, 269, 270, 281, 298, 382, 384, 386,  
390, 466, 496, 498; 29—92, 97, 107, 109, 277, 437, 471

### ARBITRATION

- medical malpractice claims, 29—295 to 302

### ARGUMENT TO JURY

- closing argument, transcripts of testimony quoted, 29—340
- instructions, 29—339 to 341
- "invited error" rule, 29—221, 225 to 228
- misconduct of counsel
  - appeals to bias, prejudice or self-interest, 29—225 to 228
  - credibility, expressing personal opinion, 29—225, 226
  - disparagement of witness, 29—225 to 227
  - opinions of counsel presented, 29—243, 244
  - settlement efforts disclosed, 29—267
- prejudicial argument
  - disparagement of witnesses, 29—225 to 227
  - objections, necessity for, 29—221

### ARGUMENT TO TRIAL JUDGE

- costs of litigation
  - witness' fees and expenses, justification, 29—183, 184
- settlement evidence, right to disclose, 29—257

### ARM AMPUTATION

- medical evidence, 28—441, 494

### ARM INJURY

- medical evidence
  - nerve injury, 28—156
  - permanency and rehabilitation, 28—156
- products liability, 28—433, 435

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### ASSAULT

- automobile passengers assaulted by third parties, 29—52, 68
- damages
  - mental anguish, 29—524
  - punitive, 28—197; 29—524
  - remittitur practice, 29—525
- governmental liability case, 28—5
- invitee assaulted by third person
  - foreseeability issues, 28—275
  - hotel and motel cases, 29—443
- mental patient as assailant, vicarious liability, 29—23
- participant in sport, contest or game as victim
  - professional athletes, 29—23
- policeman as plaintiff, 28—197
- respondent superior issues, 29—524
- schoolchildren assaulted, 29—444
- union member, assault by other members, 29—523

### ASSUMPTION OF DUTY

- "negligent volunteer" rule, 28—138, 142
- nonmedical services, physician's duty, 28—125, 127, 132, 133
- required medical examinations, 28—124, 129 to 131
- school-sponsored activities, 28—335, 343, 346

### ASSUMPTION OF RISK

- amusement device accidents, 28—335, 342, 344
- automobile guest case, 29—316
- definition and elements, 28—271
- doctrine recognized, 28—429
- police officers, risks assumed, 29—402, 403
- products liability cases, 28—332, 340, 342, 344, 347, 427 to 434
- sports, game or contest participants
  - products liability cases, 28—22, 332 to 347
  - professional athletes, 29—23

### ATTORNEY AND CLIENT

- admissions by attorney, 28—148, 156, 160
- ethics issues
  - champerty and maintenance issues, 29—237, 243, 245
  - collusive agreements, 29—233 to 251
  - excessive fees charged, 28—13
  - inciting spurious litigation, 28—13
  - representing conflicting interests, 28—15, 16; 29—452
- fee awards
  - award by court, 29—524
  - claim invalid, 29—88
  - excessive award, 28—253
  - frivolous litigation, cost of defending, 29—12
  - judicial notice issues, 29—393, 398
  - restriction, medical malpractice case, 29—421
  - statutes authorizing, 28—253; 29—92, 101

(References are to volume and page numbers)

**ATTORNEY AND CLIENT (Continued)**

**fee awards (Continued)**

- unfair claim practices by insurers, 29—133 to 135
- specialized practice, trends toward recognition, 29—13
- work product immunity, 28—26 to 45

**AUTOMOBILE ACCIDENTS**

**backing accident, 28—269**

**bicycle collisions**

- contributory negligence of bicycle rider, 28—150, 151
- reasonable care by motorist, 28—150

**"blackout" or death defense**

- burden of proof, 28—148
- circumstantial evidence, 28—148

**children**

- automobile parked and unlocked, 29—437
- pedestrian accidents, 29—388, 434, 437, 442

**defective equipment**

- brakes, 29—275
- headlights, 28—445

**directed verdict or judgment for defense, 28—149, 270**

**emergency situations**

- burden of proof, 29—276
- mechanical failure, 29—275

**expert evidence, brake failure, 29—276**

**governmental liability**

- road construction, design or maintenance, 28—6
- head-on collision, 28—179, 259, 445

**instructions**

- "blackout" defense, 28—148
- burden of proof, 28—148
- erroneous, 28—62; 29—69
- prima facie case, effect, 28—62

**intersection collisions**

- deceptive signalling, 29—413
- lookout issues, 28—262
- right of way, 28—262, 267

**intoxication evidence**

- breathalyzer, 29—286
- opinion of police officer, 29—286
- testimonial admissions, 28—350

**judicial notice issues**

- carelessness of children, 29—388
- reaction time of motorists, 29—380, 385, 389, 390

**passenger accidents**

- assaults by third parties, 29—52, 68
- contributory negligence, 28—349
- interfamily litigation, 29—54
- intoxicated driver, 28—349

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### AUTOMOBILE ACCIDENTS (Continued)

#### pedestrian accidents

- assumption of risk, 28—271
- comparative negligence issues, 28—195
- contributory negligence, adult, 28—271; 29—389, 390
- lookout issues, 28—270

#### physical facts as evidence

- impeachment of plaintiff, 28—97, 386, 495
- mechanical condition of vehicle, 28—148; 29—276

#### proximate cause issues, 28—440

#### rear-end collisions

- contributory negligence, 28—63, 162; 29—413
- lookout issues, 29—216
- negligence not presumed, 29—414
- stopping for signals or traffic, 28—62, 162, 164, 297
- third vehicle involved, 28—162

#### statutes, ordinances or regulations violated

- emergency as excuse, 29—276
- proximate cause issues, 28—447

#### unavoidable accident defense

- "blackout" of motorist, 28—147
- burden of proof, 28—148
- instruction thereon improper, 28—446
- jury issues, 28—446
- mechanical failure, 29—275

### AUTOMOBILE GUEST CASES

#### assumption of risk, 29—316

#### constitutionality, 28—349

#### contributory negligence defense, 28—349, 350

### AUTOMOBILE INSURANCE

#### declaratory judgment use, 29—404

#### defense of insured

- declaratory judgment, noncoverage, 28—47

#### direct action against insurer, tortious claim handling, 29—6

#### exclusion of coverage

- household members' injury, 28—47; 29—404
- validity of exclusion, 28—48, 49

#### nonowned automobile, policy definition unambiguous, 29—405

#### omnibus or additional insured, "temporary substitute automobile" defined, 29—405

#### policy language construed, "arising out of ownership or use," 29—52

#### proximate cause issues, 29—53, 70

#### punitive damage coverage, 29—287

#### stolen vehicles, coverage issues

- confiscation by police as "loss," 28—170
- "factual expectations of insured" test, 28—167
- good faith of insured, 28—166, 169, 176, 177
- insurable interest, elements, 28—166, 168, 174 to 177
- insurer not liable, 28—177 to 179
- measure of damages, 28—172, 175

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### AUTOMOBILE INSURANCE (Continued)

#### stolen vehicles, coverage issues (Continued)

- policy language construed, 28—169, 170
- public policy issues, 28—171, 172
- right of possession held insurable, 28—167, 172, 174 to 177

#### uninsured motorist coverage

- definitions and distinctions, 28—49
- exclusions, 28—49
- insurable interest issues, 28—174
- "physical contact" requirement, 29—70
- repugnancy with statute, 29—6

### AVIATION ACCIDENTS

#### conflicts of law issues, stipulation, 29—432

#### expert evidence

- cause of accident, 29—62
- evidence inadmissible, 29—62

#### military aircraft, 28—488

#### private plane accidents

- cause of accident, 29—62
- weather evidence, 29—62, 63

#### products liability cases, 28—324, 326, 374, 376, 437; 29—61

#### property damages cases

- FTCA case, 28—488
- stipulation, 28—488

## B

### BACK AND SPINE

#### big award, 29—258

#### excessive award, 28—96

#### impeachment of disability, 28—97, 98

#### medical evidence

- arachnoiditis, 28—121
- arthritic or pre-existent complications, 28—96; 29—4, 75
- orthopedist as witness, 28—195
- permanency and rehabilitation, 28—119, 121, 129, 195; 29—4, 75, 76
- traumatic causation, 28—495
- X-rays, 28—98

#### small award adequate, 28—195, 495

### BIRTH CONTROL

#### damages for interference

- costs of raising child, 28—10; 29—439, 446
- emotional distress of parents disallowed, 29—439, 446
- pain and anxiety of parent, 28—8 to 10

#### medical malpractice

- genetic deficiencies, misdiagnosis, 28—9, 10; 29—439, 446
- ineffective sterilization, 28—9 to 11

#### products liability, ineffective birth control devices, 29—489

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### BURNS

- big awards, 28—1, 490
- medical evidence
  - extent, permanency and rehabilitation, 28—494
- products liability case, 28—1

## C

### CANCER

- medical malpractice, diagnostic negligence, 28—411; 29—241

### CARDIOVASCULAR DISEASE

- medical evidence
  - autopsy as basis for opinion, 28—52
  - causation by employment, 28—361
  - causation by trauma, 28—52
  - coroner's opinion, 28—50, 52

### CARRIER ACCIDENTS

- bus passenger case, collision with another vehicle, 28—385

### CASUALTY INSURANCE

- tortious claims handling, cause of action not recognized, 29—92

### CHILDREN

- dog bite case, 28—53
- familial litigation
  - automobile insurance coverage, 28—49
  - child suing parent, 28—49; 29—54
  - immunity retained, 29—56
  - limited immunity retained, 29—410
- firearms accident, 28—136
- limitation of actions issues
  - builders' liability, limitation, 28—360
  - medical malpractice statutes, 29—422
- property possessor's liability
  - directed verdict or judgment for defense, 28—159
  - dog bite, landlord's liability, 28—53
  - plate glass, collision with, 28—359
  - pony as attractive nuisance, 29—408
  - recreational use immunity, 29—65
  - trespasser, licensee or invitee, 28—161
- toy injuries, 28—375, 430, 434
- unwanted life cases, 29—439, 446
- "wrongful life" cases
  - cause of action not recognized, 28—8, 9
  - cause of action recognized, 28—9

### CIRCUMSTANTIAL EVIDENCE

- defamation actions, malice of defendant, 28—485, 486
- fire insurance cases, 28—239 to 357

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### CIRCUMSTANTIAL EVIDENCE (Continued)

- life insurance case, 29—200
- medical malpractice cases, 28—58, 60
- misconduct of jurors, 28—482
- products liability cases, 28—373, 430
- respondeat superior, implied authority, 28—380, 381

### CLASS ACTIONS

- privacy action, 28—290

### COMPARATIVE NEGLIGENCE

- contribution among tortfeasors, 29—19
- costs of litigation, apportionment in proportion to fault refused, 29—185, 190
- fault comparison, 28—3, 149, 196; 29—185
- interrogatories to jury, 29—19
- products liability cases, 28—2; 29—19

### COMPROMISE AND SETTLEMENT

- encouragement as public policy, 28—69, 73, 81
- evidence of settlement, admissibility
  - advance payments evidence inadmissible, 29—253, 263, 265, 267
  - bias of witness shown, 29—257, 261, 267 to 272
  - "guaranteed verdict" agreements, 29—240, 246 to 249
  - inadmissible to prove liability, 29—253, 263, 265 to 267
  - loan receipt or "Mary Carter" agreements, 29—258, 266 to 272
  - mitigation of damages shown, 29—266
  - partial or total disclosure issues, 29—262, 264, 268
- future damages, periodic payment, 29—17, 18
- "guaranteed verdict" agreements
  - agreements held void, 29—233, 245, 271
  - criticisms, 29—233 to 237
  - definition and elements, 29—237
  - disclosure to jurors, 29—240, 246 to 249, 261, 267 to 272
  - ethics issues, 29—237, 245
  - supervision by trial judge as control, 29—250
- huge verdicts, effect, 28—3
- joint and several liability, "good faith" settlement as bar, 29—249
- medical malpractice case, 29—255
- railroad accident, case, 29—465
- settlement during trial, 28—3
- statutes authorizing periodic payments, 29—18
- unfair settlement practices, 29—355

### CONFLICT OF LAWS

- aviation accident, 29—432
- evidence rules, State and federal courts, 28—107, 108, 111
- stipulation of jurisdiction, 29—432

### CONSTITUTIONAL LAW

- access to courts
  - limitation of actions, effect on, 29—506



## INDEX OF SUBJECTS

(References are to volume and page numbers)

### CONSTITUTIONAL LAW (Continued)

#### access to courts (Continued)

- medical malpractice screening panels, 29—297
- medical malpractice statutes, 28—68, 74, 87; 29—419

#### civil rights, employment discrimination, 28—6

#### contracts

- contingent fees, medical malpractice statutes restricting, 29—421

#### damages

- punitive, 29—76
- "special legislation" issues, 28—70, 78, 83, 87
- statutory limitations, 28—70, 78, 83, 87; 29—406, 421

#### defamation of public figures, 28—460 to 486

#### due process issues

- capricious application as denial, 29—296
- delay as denial, 29—301

#### equal protection issues

- builders' liability, limitation, 28—358
- Dead Man's statutes, 29—304, 310, 313
- exclusive remedy provisions, workmen's compensation statutes, 28—456
- "fireman's" rule upheld, 29—403
- gratuitous recreational use of land, 29—65
- insurance policy exclusions, 28—48
- medical malpractice control statutes, 28—69, 73, 78, 85, 86, 88; 29—421
- punitive damage coverage, revelation to jury, 29—288
- "special" or "class" legislation prohibited, 29—506
- Wrongful Death Act, limitation on recovery, 29—110
- wrongful death limitation held valid, 29—407

#### freedom of speech

- invasion of privacy actions, 28—280, 281, 291, 292
- malicious or reckless publication, 28—286, 288, 291, 292
- newsworthiness, 28—460 to 486

#### immunity from suit, legislative immunity, 28—461

#### jury trial

- directed verdict, 29—76
- effect of additur or remittitur, 28—96
- inadequate voir dire as denial, 29—471
- medical malpractice control statutes, 29—420

#### limitation of right of action or recovery, 28—17, 66 to 88, 357; 29—296, 299, 403, 407, 421, 422

#### medical malpractice statutes

- statutes invalid, 28—75, 86, 87; 29—295
- statutes held valid, 28—66, 70, 83 to 86, 88; 29—417 to 424

#### no-fault insurance, constitutionality upheld, 28—20

#### presumption of validity, 28—70, 82

#### privacy action, 28—280, 281, 291, 292, 403; 29—198

#### separation of powers

- construction of statutes, 29—174, 304, 306, 311
- medical review panel's report, 28—69, 77, 85, 87

#### "state action" issues, 29—198

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### CONSTRUCTION ACCIDENTS

electrical accident, 28—455  
owner's liability, 28—455  
products liability case, 28—436

### CONTINGENT FEES

limitation, medical malpractice statutes, 29—421, 422

### CONTRACTOR'S LIABILITY

road under construction or repair, 29—258

### CONTRACTS

damages for breach

life expectancy, judicial notice, 29—384  
loss of bargain, 28—300  
punitive, 28—300

insurance contracts, damages for breach

foreseeability issues, 29—90  
future losses, lump-sum recovery, 29—78  
mental pain, 29—84  
punitive, 29—84

interference with contract rights, 29—86

mortician as defendant, defective casket provided, 28—188

physicians as defendants

confidentiality as implied covenant, 28—399, 402 to 404  
insurance forms for patient, 28—125, 132  
results of treatment guaranteed, 29—179

unmarried partners action, 29—383

### CONTRIBUTION AMONG TORTFEASORS

active versus passive negligence, 28—455, 457

comparative negligence jurisdictions, 29—19

employer immune, 28—455

"equal division" rule, 29—261

joint and several liability, 28—198

medical and nonmedical defendants, 29—169, 179 to 181

parental immunity as bar, 29—408

punitive damages, apportionment allowed, 28—199

settlement by co-tortfeasors, effect, 29—249, 258, 262 to 272

Uniform Contribution among Tortfeasors Act, 29—249

### CONTRIBUTORY NEGLIGENCE

electrical accident case, 29—205

humanitarian doctrine as exception, 29—380, 388

imputability issues, 29—279, 456

instructions, 29—209, 279

medical malpractice case, 29—204

products liability cases, 28—427 to 434

railroad crossing case, 29—456

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### CONVICTION OF CRIME

- admissibility issues, telephone harassment, 28—293
- credibility, impeachment by showing
  - evidence held inadmissible, 29—285
- direct evidence issues
  - intent to defraud, conviction as proof, 29—285
- fire insurance cases, arson conviction of insured, 28—242, 247, 254 to 256

### CORPORATE MANAGEMENT LIABILITY

- criminal actions, defective product cases, 29—29
- fraudulent misapplication of funds, 29—191
- professional corporations, 28—128

### COSTS OF LITIGATION

- depositions
  - unpublished deposition, effect, 29—189, 190, 194, 195
  - videotaped depositions, 29—189, 195
- discretion of trial judge
  - discretion abused, 29—189, 192, 195
  - discretion not exceeded, 29—182, 190, 191, 193 to 195
- expert witness' fees and expenses
  - computation methods, 29—183
  - fees awarded in full, 29—183, 185, 190, 191
  - partial disallowance, 29—192, 193
  - statutes controlling, 29—182, 188, 192 to 194
  - transportation costs, 29—184

### COUNTERCLAIMS

- medical malpractice litigation, 28—14, 15

### CROSS-EXAMINATION

- expert witness
  - compensation of witness, 29—220, 229
  - government safety standards used, 29—216
  - scope of examination, 29—217
- medical witness
  - bias shown, 29—211, 219, 223 to 225
  - history of patient, 28—298
  - impeachment, 29—211, 219, 223 to 225
  - professional witnesses, 29—212, 219, 223 to 225
- misconduct of counsel, 28—267; 29—228 to 230
- plaintiff as witness
  - impeachment, 28—298
  - prior inconsistent statement shown, 28—298
- products liability case, 29—216
- purposes and methods of examination
  - impeachment, 29—258
  - insurance coverage of punitive damages, 29—287
- scope of examination, 29—217, 218

(References are to volume and page numbers)

### CUSTOM AND HABIT EVIDENCE

life insurer's business practices, 29—200, 201  
products liability cases, 28—303 to 330, 425

## D

### DAMAGES, DEATH ACTIONS

ad damnum amendment, 29—107  
big awards, adult decedent, 28—7, 10, 488; 29—24, 107  
companionship loss by parents, cause of action not recognized, 29—406  
companionship with child, loss by parents  
    adult child, recovery denied, 29—24  
    age of majority issues, 28—387  
    burden of proof, 28—388  
    cause of action recognized, 28—387  
    grief of parents distinguished, 28—388  
consortium loss by husband, 28—490; 29—24  
consortium loss by wife, 29—109  
constitutionality of statutes, 29—406  
excessive award, child decedent, 28—90  
expectancy of decedent  
    future earnings, 29—109  
    mortality table, 28—490  
grief of survivors  
    action disallowed, 29—406  
    child decedents, 28—182, 185; 29—22  
    "extrasensory empathy," identical twin, 29—432  
medical malpractice cases, 28—7, 10  
no-fault motor vehicle insurance case, 28—21  
pecuniary loss, adult decedent  
    burden of proof, 28—387  
    contributions anticipated, 28—387  
    household services, 29—24  
    methods of valuation, 28—490  
    pension, 29—24  
pecuniary loss, child decedent  
    contributions anticipated, 28—92  
remarriage of surviving spouse, voir dire disclosure, 29—479, 486  
remitter practice, 28—93  
small awards adequate, 28—386

### DAMAGES, PERSONAL INJURY

ad damnum  
    medical malpractice, clause prohibited, 29—423  
appellate review  
    "clearly erroneous" standard, 29—323, 330  
    scope of review, 28—97, 98, 196, 382, 384, 386, 496, 498; 29—106, 107  
apportionment, joint tortfeasors, 28—198  
assault case, 29—524

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### DAMAGES, PERSONAL INJURY (Continued)

#### child claimants

disfigurement, 28—494; 29—331

future earnings, 28—443, 492 to 494

#### comparison of awards, 29—107

#### consortium, loss by children

cause of action recognized, 28—22

#### consortium, loss by husband

evaluation of damages, 29—106

injury to nonplaintiff spouse not recognized, 29—427

liability without damages, 28—193

unmarried partners, action not recognized, 28—22

#### consortium, loss by wife

psychic injury to husband as cause, 28—180

#### earnings, future, 28—379, 382

#### elderly plaintiff, 28—96

#### expectancy issues

future earnings, 28—443

future employability, 28—492

future inflation, 28—491, 493, 494

future pain and suffering, 29—324, 330

life expectancy, 29—105

permanency of disability, 28—382, 492, 494; 29—106, 324, 328

work expectancy, 28—492, 493

#### expert evidence

economists, 28—492 to 494

future inflation, 28—493

psychologist, 28—491, 493

return on investments, 28—493, 494

vocational rehabilitationist, 28—493

#### future medical care

burden of proof, 28—95

periodic payments, 29—17, 18

reduction to present value, 29—106

#### income tax evidence, tax exemption of award, 28—444

#### liability without damages, 28—297, 382, 385

#### medical expenses, 28—192, 195, 491, 495; 29—329, 524

#### new trial, damages alone, 29—332

#### remititur practice, 28—96, 97; 29—325, 328

### DAMAGES, PROPERTY

#### automobile damage, owner's opinion, 28—264

#### aviation accidents, 28—488; 29—62

#### conversion of trade secrets, 28—299

#### land and buildings

fire loss, 28—201

repair evidence, 28—201

stipulations, 28—488

### DAMAGES, PUNITIVE

#### appellate review, 28—202; 29—5, 6, 524, 525

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### DAMAGES, PUNITIVE (Continued)

- assault cases, 28—197, 29—523
- big awards, 28—214, 219, 226
- breach of contract, award improper, 28—301; 29—82, 84, 88, 90
- burden of proof, 28—301; 29—84, 85
- constitutional issues, 29—76, 110
- conversion as grounds, 28—301
- criticism, 28—199
- death action, 29—110
- excessive awards, 28—1, 388; 29—5 to 8, 73, 524, 525
- improper claim handling as basis, 28—20, 202, 253, 254, 388; 29—5, 6, 77, 84, 85, 368 to 370
- insurance coverage, 29—7, 8, 288
- insurer's liability, 28—200, 214, 219, 226; 29—73 to 103
- measurement rules
  - compensatory loss factor, 28—389; 29—77, 100, 525
  - insurance coverage irrelevant, 29—288
  - poverty of defendants, 29—287, 524, 525
  - wealth of defendant, 29—77, 100, 525
- remittitur practice, 28—389, 390; 29—524, 525
- respondent superior liability, 29—77, 111, 524

### DEATH ACTIONS

- aviation case, 28—488
- contributory negligence of decedent, effect, 29—278
- dramshop liability case, 28—259
- FTCA case, 28—488
- governmental liability, 28—130
- limitation of actions, accrual of cause, 29—20
- limitation of liability, 29—110, 406
- medical malpractice as cause, 28—7, 10, 130, 131
- pre-induction physical, medical malpractice, 28—130
- property possessor's liability, 28—159
- proximate cause issues, 28—50, 445; 29—53
- spouse or estate of spouse as defendant, interspousal immunity, 29—54

### DECLARATORY JUDGMENT

- automobile insurance cases, 28—47; 29—52

### DEFAMATION

- attorneys as plaintiffs, 28—474, 476, 481, 483, 484
- burden of proof, 29—283
- crime accusation, 28—382, 468, 476, 478, 482 to 484
- employee evaluation report, 28—151; 29—281
- examining physician's report, 28—133
- fair comment defense, 28—474, 475, 478 to 480, 484
- humor, satire or parody cases, 28—460, 467, 471
- liability without damages, 28—382
- libel per se, 28—384
- "libel-proof" persons, 28—472, 482

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### DEFAMATION (Continued)

- malice element
  - burden of proof, 28—153, 465, 473, 475 to 480
  - circumstantial evidence, 28—476, 485, 486
  - ill-will not sufficient, 28—154, 466
- newspaper or magazine libel
  - magazine cases, 28—479 to 484
  - newspaper cases, 28—473 to 486
- physicians as defendants, actions by patients
  - malice issues, 28—402
  - privilege or duty to disclose, 28—401
  - truth as defense, 28—401
- privilege defense
  - absolute privilege, 28—461
  - abusing or exceeding privilege, 28—154, 485
  - common interest or duty, 28—153, 154
  - complaint to private club's directors, 29—411
  - existence, issue of law, 28—154
  - fair comment or criticism, 28—474, 475, 478 to 480, 484
  - public figures, 28—460 to 486
- publication issues, 28—477; 29—283
- public figure status
  - involuntary, 28—482 to 485
  - voluntary, 28—465, 474, 478 to 481
- public officials
  - court officials, 28—474, 476
  - elected or appointed, 28—474, 475, 478
  - military personnel, 28—474
  - police officers, 28—476 to 478
  - social worker, 28—477
  - teachers, 28—473
- radio or television publication, 28—462
- "reckless disregard" test
  - reason to suspect falsity, 28—466, 485
  - recklessness established, 28—476, 485
  - reliance on prior publications, 28—467, 477, 483

### DIRECTED VERDICT OR JNOV

- absence of duty as grounds, 28—53
- contributory negligence, question of law, 28—150, 153
- defendants' liability, damage issues tried, 29—4, 76
- grant as error, 28—62
- refusal as error, 28—53

### DISCOVERY

- employee's statements to employer, 28—30, 31, 38 to 40
- expert evidence, opinions of opposing experts, 29—31, 34, 41, 43 to 50
- good cause requirement, 29—57, 58
- identity of witnesses, 28—33, 34, 43
- instructions proposed by opponents, 29—338, 339

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### DISCOVERY (Continued)

- insured's statement to insurer
  - attorney-client privilege applied, 28—36
  - statements not privileged, 28—39, 40, 42, 44
  - trial preparation privilege, 28—29, 35, 41
- insurer's claims records
  - unfair practices, action alleging, 29—370
- medical evidence
  - identity of witnesses, 29—41 to 43, 45 to 47, 381
  - interrogatories used, 29—41 to 43, 45 to 47
  - malpractice screening panel, 29—418, 419
  - order to disclose, 28—352
- objections to discovery
  - burden or expense, 28—34, 36
  - burdensome tactics, 28—34, 36; 29—57
  - privilege or immunity issues, 28—26 to 44
  - relevancy issues, 29—56
- party's own statement, 28—39, 41
- privilege or immunity issues
  - attorney-client privilege, 28—32, 36
  - attorney's work product, 29—48
  - excess liability actions, 28—43
  - interoffice memoranda, 28—42, 43
  - trial preparation, 28—28, 31, 35, 36, 39
  - work product privilege, 28—30, 33, 38, 43
- sanctions for refusal to provide
  - dismissal of claim or defense, 28—351
  - precluding witness' testimony, 29—28 to 50, 381
- settlement agreements with co-defendants, 29—246, 259, 271, 283
- statements of nonparty witness
  - availability of witness, 28—30, 35, 38
  - discoverable as of right, 28—44
  - lack of diligence, 28—38
  - time factor, 28—29, 31, 38, 39
- "substantial need" issues
  - burden of establishing, 28—29, 34, 35, 37, 41, 42
  - death or unavailability, 28—40, 41
  - employment relationship as factor, 28—31, 41
  - time as factor, 28—30, 34, 37 to 42
- trend toward liberalization, 29—35, 38 to 41
- trial preparation materials
  - attorney-generated materials, 28—30, 42
  - insurer, party or other agent, 28—27, 35, 37, 38
  - litigation, when anticipated, 28—29, 37, 39, 41, 42

### DISFIGUREMENT

- medical evidence, 28—179, 339; 29—331
- products liability case, 28—338



## INDEX OF SUBJECTS

(References are to volume and page numbers)

### DISMISSALS AND NONSUITS

#### involuntary dismissals

- dismissals held unjustified, 29—170, 173, 180
- disobedience of court rule or order, 28—351
- failure to establish cause of action, 28—180, 183, 187, 290, 440, 453, 456
- lack of notice, warranty action, 29—490
- limitation of actions barring suit, 28—358; 29—180
- medical malpractice, screening requirements not satisfied, 29—178, 179

refusal as error, 28—183

### DRAMSHOP LIABILITY

#### statutory liability

- construction of statutory language, 28—261
- proximate cause issues, 28—261
- third person injured or killed, 28—259

## E

### ECOLOGY

water pollution, 29—24

### ELECTRICAL ACCIDENTS

- contribution among tortfeasors, 28—455
- contributory negligence defense, 29—205
- FTCA case, 28—490
- products liability cases, 28—374, 420, 432
- property possessor's liability, 28—455
- workmen's compensation case, 28—455

### EVIDENCE

#### codification of State rules

- discouraged, 28—106, 107, 109 to 111
- encouraged, 28—107, 108, 111

common-law rules applied, 28—106

#### Dead Man's statutes

- agents or employees of parties, 29—308, 311, 313, 314, 317 to 319
- amendment or repeal, effect, 29—304, 307, 308, 314, 319
- common-law origins, 29—308, 310
- constitutionality, 29—302, 313
- criticisms, 29—304, 310
- Federal Rules of Evidence rule, 29—312
- inability of deceased to refute, 29—306, 316, 317
- interests protected, 29—313, 315, 316, 318
- life insurance cases, 29—312, 317, 319
- medical malpractice cases, 29—313, 315
- waiver issues, 29—315

#### Federal Rules, adoption by State

- comment and criticism, 28—105, 107, 110
- manner of adoption, 28—112 to 114

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### EVIDENCE (Continued)

#### Federal Rules, adoption by State (Continued)

- partial adoption discouraged, 28—109
- learned treatise evidence, admissibility foundation required, 29—383, 390, 392

### EXHIBITION OF PERSONAL INJURY PLAINTIFF

- disfigurement, 28—494
- medical treatment demonstrated, 29—327
- paralysis, 29—328

### EXPERIMENTAL EVIDENCE

- amusement device accident, 28—345
- inadmissible evidence, 29—462
- railroad crossing accidents, lookout issues, 29—461, 462

### EXPERT EVIDENCE

- attorney's standard of care, 29—30
- aviation accident case, 29—61
- basis for opinion
  - experiments by expert, 28—345
  - Federal Rules of Evidence, effect, 29—64
  - on-site investigation, 28—241, 252, 254
  - safety standards issued by government, 29—216
  - sufficiency of basis issues, 29—217
- compensation of witnesses
  - chargeable as costs, when, 29—181 to 195
- competency of witness, issue of law, 29—64
- defective construction of residence, 29—510
- discovery rights of adverse party, 29—31, 34, 41, 43 to 50
- financial records, audit evidence, 29—191, 193
- fire insurance cases, 28—241, 252, 254
- inadmissible expert evidence, 29—63
- legal malpractice case, 29—30
- life insurance case, 28—357
- necessity, 29—30
- railroad accident cases, 29—456, 458, 461, 462
- sports injury cases, 28—333, 335, 345
- state of the art, 28—304, 320; 29—217
- value of defective residence, 29—510
- witnesses
  - accident reconstruction expert, 29—43, 44, 47, 457
  - accountants, 28—250; 29—191, 193
  - architect, 29—49
  - attorney, 29—30
  - employees of defendant, 29—458
  - engineer, 29—34, 216

### EXPLOSIONS

- compressed air, 28—431
- paint fumes, 28—436

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### F

#### FALL ACCIDENTS

- home builder's liability, 28—453
- property possessor's liability, 28—134; 29—36
- proximate cause issues, 28—440
- scaffold accident, 28—436

#### FALSE ADVERTISING

- insurers as defendants, Unfair Practices Act provisions, 29—361

#### FALSE ARREST OR IMPRISONMENT

- governmental liability, 28—5

#### FARM ACCIDENTS

- assumption of risk defense, 28—435

#### FEDERAL COURTS, DIVERSITY JURISDICTION

- jurisdictional amount, 29—85
- removal to federal court, 29—454
- substantive law of forum state applied, 29—86 to 88, 95

#### FEDERAL RULES OF EVIDENCE

- adoption by States, 28—101 to 117
- comment and criticism, 28—105, 107, 110, 113
- competency of witnesses, 29—312
- conflict with State rules, 29—312
- expert evidence
  - hypothetical question not required, 29—64
  - method of presenting, 29—219
- hearsay evidence, exceptions
  - "catch-all" exceptions, 29—108
  - competency of declarant, 29—109
- judicial notice, 29—383, 386, 387, 392
- origins and development, 28—105
- privileged communications, 28—397

#### FEDERAL TORT CLAIMS ACT

- aviation accident, 28—488
- big awards, 28—488, 490
- hospital negligence, supervision of mental patient, 29—323
- medical malpractice, preinduction physical examination, 28—130
- military accident, 28—488
- State substantive law applied, 28—488, 489

#### FIREARMS ACCIDENTS

- automobile insurance cases, 29—52, 68
- governmental liability case, 28—136
- products liability case, 28—3

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### FIRE INSURANCE

#### arson or fraud by insured

- burden of proof, 28—240, 246, 249 to 257
- circumstantial evidence, 28—241, 249 to 257
- co-insured or third parties, effect on, 28—243, 248, 256
- criminal conviction of insured, 28—247, 254
- motive, 28—241, 246, 251, 252
- previous fires, 28—247, 255
- trends, 28—245

#### evaluation of loss, 29—6, 89, 90

#### foreseeable loss from nonpayment recoverable, 29—90

#### statutory penalties for nonpayment, 29—92, 97, 100, 101

#### tortious claims handling, cause of action not recognized, 29—6, 89, 95

### FOOTBALL ACCIDENTS

#### negligence of coaches, officials or organizers, 28—335, 343, 379

#### products liability, 28—371

### FRAUD AND DECEIT

#### burden of proof, 29—284

#### corporate management liability, 29—191

#### insurer as defendant, 28—272; 29—9

#### misrepresentations not proved, 28—273

#### Unfair Claims Practice statutes, violation as, 29—9

## G

### GOVERNMENTAL IMMUNITY

#### educational entities, 28—335

#### employees and officials of government, 28—336, 337

#### "Good Samaritan" statutes, 28—137, 144

### GOVERNMENTAL LIABILITY

#### anti-wiretap legislation, violation of, 28—294

#### assault, 28—5

#### educational entity cases, 28—335, 379; 29—23

#### false arrest, 28—5

#### inadequate sports equipment furnished, 28—335, 346, 379

#### road construction, design or maintenance, 28—6; 29—266

## H

### HAND AND FINGER INJURIES

#### products liability cases, 28—364, 422, 424, 432, 435

### HOMEOWNER'S INSURANCE

#### fraud by insured, 29—284

#### tortious claims handling

##### cause of action recognized, 29—80

##### damages recoverable, 29—83 to 85

##### definition and elements, 29—82, 83

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### HOSPITAL RECORDS

medical malpractice case, 29—298, 300

### HOTEL AND MOTEL CASES

liability to guests, invasion of privacy, 29—111

respondeat superior issues, nonmanagerial employee's intentional tort, 29—112

## I

### IMPEACHMENT OF EXPERT WITNESSES

scope of cross-examination, 29—217

products liability case, bias shown, 28—304

### IMPEACHMENT OF PLAINTIFF

#### accident facts

physical facts inconsistent, 28—385, 386

pretrial statement used, 29—36

testimony improbable, 29—206, 207

#### disabilities claimed

activities after accident, 28—98, 196, 298

complaints not made at time of accident, 28—192, 297

previous or subsequent disease shown, 28—193, 194, 297, 298

private investigator's testimony used, 28—196

fire insurance case, conviction of arson, 28—255

injuries claimed, complaint not made at time of accident, 28—97, 386; 29—59

settlement evidence, 29—255, 258

### INCOME TAXES

damage issues, taxation of award, 28—444

### INDEMNITY ACTIONS

railroad accident case, 29—452, 453

### INSTRUCTIONS

burden of proof, 28—148, 249

contributory negligence, 29—205, 279

#### damage issues

defamation per se, damage presumed, 28—383

life expectancy, 29—384, 390, 391

nontaxability of awards, 29—341

early preparation recommended, 29—455

#### erroneous instructions

abstract issues, presented, 29—341

burden of proof, 28—62, 240, 253, 346, 376, 377, 443, 475, 480; 29—412

harmless error, 28—346, 384

inherently dangerous commodity, 28—449

patent danger rule, 28—423, 435, 436

res ipsa loquitur, 28—450; 29—350

standard instruction erroneous, 28—137, 314; 29—351

standard of care, 29—69

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### INSTRUCTIONS (Continued)

- evidentiary basis, necessity, 29—342, 343
- "Good Samaritan" defense, 29—290
- legal malpractice case, standard of care, 29—13
- nontaxability of awards, denial as error, 28—444
- pattern instructions
  - limited use recommended, 28—370, 376, 377; 29—335 to 353
  - other jurisdictions, use of, 29—351
  - verdict-directing instructions, 28—383
- presumptions, rear-end collision case, 28—62
- pretrial procedure
  - discovery of opponent's instructions, 29—337, 338
  - early preparation of instructions, 29—336 to 340
- products liability cases, 28—370, 376, 377, 423, 435, 436, 449, 450
- res ipsa loquitur, 28—450

### INSURANCE

- tortious claims handling
  - avoidance measures, 29—101, 102
  - cause of action not recognized, 29—85, 87, 89, 92, 95
  - cause of action recognized, 29—85, 87, 89, 92, 95
  - definition and elements, 29—82, 83, 87
  - respondent superior issues, 29—77

### INTERROGATORIES TO JURY

- answers accompanying general verdict
  - apportionment of negligence, 28—150; 29—469
  - arson procured by insured, 28—250
  - contributory negligence, 28—163
  - damage issues, 28—150, 163, 385
  - incendiary nature of fire, 28—250
  - proximate cause issues, 28—150, 163
- comparative negligence jurisdictions, 28—150

### INTERROGATORIES TO PARTIES

- compelling responses, 29—459
- privilege or immunity from discovery, 29—48
- sanctions for failure to respond
  - abuse of discretion, 29—41 to 45
  - preclusion of evidence, 29—28 to 50
- updating of answers, sanctions for failure, 29—28 to 50

## J

### JOINDER OR SEVERANCE OF ACTIONS

- conditional agreement, plaintiff and co-defendant, 29—247
- malpractice screening provisions, effect, 29—169, 178, 180
- release of co-tortfeasor, effect, 29—249
- tortfeasor and treating physician, 29—129, 179, 181

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### JOINT VENTURE

participation in criminal act, 28—198

### JUDICIAL NOTICE

appeal, notice during, 29—380, 388 to 390, 393  
automobile driver's reaction time, 29—380, 385, 388 to 390  
geographical facts, 29—385, 396  
inflation in medical costs, 28—491  
learned treatises, authoritative nature, 29—383, 392  
legal services, value, 29—393, 398  
life expectancy, 29—385, 390, 391  
medical facts, 29—391 to 393  
notice taken improperly, 29—397 to 399

### JURORS' APPROACH TO FACTUAL QUESTIONS

informed consent, extent of warning, 29—383  
life expectancy, 29—385

### JURY TRIAL

comparative negligence jurisdictions, 28—149  
damages, 28—150, 163, 192, 195, 199, 201  
jurors' approach to factual questions  
    arson by insured, 28—249, 250, 251, 253, 254  
    burden of proof, 28—148, 193; 29—420, 427, 428, 431, 437  
    comparative negligence, 28—196  
    contributory negligence, 28—162, 164; 29—206  
    credibility, 28—196, 386; 29—206, 211 to 230, 420, 427  
    damages, 28—192, 195, 199, 201, 382, 384, 386, 388, 496  
    emergency situation, 28—148  
    emotional distress, 29—427, 428, 437  
    future income taxes, 28—444  
    malice, 28—203  
    proximate cause, 28—150, 163, 193, 446  
    respondent superior issues, 28—381  
    "serious injury," no-fault case, 29—60  
less-than-unanimous verdicts, 29—206  
objections, effect on jurors, 29—221  
right to jury trial  
    additur or remittitur, effect, 28—97  
    medical malpractice statutes, 28—68, 75, 77  
settlement evidence, admissibility, 29—239, 241, 246 to 249  
voir dire examination, scope and purpose, 29—471, 475, 477

## L

### LANDLORD AND TENANT

tenant versus landlord  
    dog bite case, 28—53  
    landlord not "harbinger" of tenant's dog, 28—54

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### LAST CLEAR CHANCE

"humanitarian" doctrine, 29—380, 388

### LAWN MOWER ACCIDENTS

manufacturer's design liability, 28—435, 436

### LEGAL MALPRACTICE

damages, burden of proof, 28—14

expert evidence necessity, 29—30

increase in litigation, 28—11

mitigation of damages, 29—266

settlement of claim, 28—12

standard of care required, general practitioner, 29—13

### LIABILITY INSURANCE

claims adjusting, investigation and settlement

statutory liability, 29—9, 355 to 376

third parties, privity issues, 29—355 to 376

declaratory judgment action

noncoverage alleged by insurer, 28—242

settlement impasse, action to resolve, 29—372

defense of insurer, duty of insured

intentional tort by insured, 28—242

public policy issues, 28—243, 249

direct action against insurer

lack of privity defense, 29—356, 363 to 366

unfair practices as basis, 29—355 to 376

legal malpractice insurance, availability and cost, 28—11

medical malpractice insurance

availability and cost, 28—7; 29—15

"freezing" coverage and premiums unlawful, 28—79

products liability insurance, availability and cost, 28—20

punitive damages, coverage by insurance, 29—7

### LIFE INSURANCE

accidental death, discovery rights of insurer, 29—395

coverage issues, 29—200

misrepresentation in application

health and medical history, 28—355

insurer's right to cancel, 28—356

statutes and regulations controlling claims practices

attorney's fees of claimant, 29—133 to 135

authority to issue policies, 29—139 to 141

checklist, practices to avoid, 29—146 to 149

interest on payments withheld, 29—135 to 139

Model Act, 29—153 to 162

Model Regulation, 29—163 to 167

sanctions, 29—126 to 129

unfair practices legislation, violation of, 29—355 to 376



## INDEX OF SUBJECTS

(References are to volume and page numbers)

### LIMITATION OF ACTIONS

- accrual of cause
  - death actions, 29—20
  - discovery rule, 29—422
  - home builder's or vendor's warranty, 29—505, 507, 512, 514 to 516
  - medical malpractice, 28—94; 29—203, 204, 422
- builders' or contractors' liability, 28—357
- constitutional law issues, 29—506
- contract or tort statute applicable, 29—514, 516
- implied warranty of habitability, 29—505, 507, 512, 514 to 516
- medical malpractice
  - accrual of cause, 29—422
  - "discovery" rule, 29—240
- minor plaintiffs
  - builders' or contractors' liability unaffected, 28—360
  - medical malpractice statutes, 29—422
- savings statute, applicability
  - construction of statute, 29—492
  - original suit in different jurisdiction, 29—491
- tolling of period, 29—180, 203, 204, 422

### LIMITATIONS OF LIABILITY

- adverse medical examinations, 28—119 to 133
- constitutional law issues, 28—68, 78, 82
- death actions, 29—110, 406
- "fireman's" rule held applicable to police officers, 29—401
- "Good Samaritan" statutes
  - persons protected, 28—135, 139, 142
  - public policy issues, 28—142 to 145
  - statutory language construed, 28—140, 141
- "guaranteed verdict" agreements, 29—233 to 251
- insurance penalty statutes, 29—84, 92, 100, 101
- medical malpractice statute, 28—68, 78, 82; 29—421
- real estate warranties, 29—512, 514 to 516

## M

### MALICIOUS PROSECUTION

- attorneys as defendants, 28—14, 15
- malice factors, 28—15
- "special injury" requirements, 28—15

### MEDICAL EVIDENCE

- amnesia, 28—350
- amputation of limb
  - arm amputation, 28—442
  - cancer necessitating, 28—442
- back and spine, 28—98, 195, 495

DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

**MEDICAL EVIDENCE** (Continued)

basis for opinion

- autopsy, 28—52
- books, treatises and articles, 29—383, 391 to 393
- coroner's examination and report, 28—52
- electroencephalogram, 28—380
- examination of plaintiff, 28—98, 298; 29—212
- laboratory tests, 28—442
- subjective complaints and statements, 28—195
- X-rays, 28—98, 156; 29—169, 211

bladder injury, 28—54

brain injury, 28—380; 29—524

burns, 28—494

cardiovascular disease

- traumatic causation, 28—52
- workmen's compensation case, 28—361

certainty of opinion, possibility opinion inadmissible, 28—52

disfigurement, 28—179, 491, 494; 29—329

drugs, effect on mental processes, 28—95, 148

emotional distress, severity and duration, 29—427, 441, 442

expert opinion unnecessary, 28—57

failure to present medical witness, 28—56, 158, 352

fees and expenses of witnesses

- taxable as costs, when, 29—181 to 195

judicial notice, 29—383, 385, 390 to 399

learned treatises, probative value, 29—383, 391 to 393

malpractice screening panels

- burden of proof, 29—299, 300
- decision of panel, 29—297

medical expenses, 28—192, 195, 495; 29—329

medical review panel's report, 28—68, 73, 81, 83 to 86

neck injury, 28—298; 29—329

nerve injury, 28—156; 29—212

neuroses and psychoses, traumatic causation, 28—179, 185, 195, 380; 29—524

pain and suffering

- decedent's pain before death, 28—93
- psychological causation, 28—90, 91

psychiatric evidence

- personality disorder, 28—95, 380
- qualifications of witnesses, 29—301
- standard of care, 29—300

psychological evidence, 28—91, 179, 185

screening panel's report

- composition of panel, 29—418, 419
- expert opinion, report as, 29—170, 174, 180, 419

stipulated evidence, 28—192

surgery explained and demonstrated, operation described, 28—56, 58, 156

viability of fetus, 29—392

X-rays, injury to fetus, 29—494

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### MEDICAL EXAMINATION OF CLAIMANT

examining physician's standard of care, 28—119 to 133

### MEDICAL MALPRACTICE

action for services, counterclaim for malpractice, 29—179

anesthesia case, cardiac arrest, 28—59

bladder injury during hysterectomy, 28—55

burden of proof, 28—158, 159; 29—299, 300, 383, 420, 495

cosmetic surgery case, 28—7

counterclaims by defendants, 28—14, 15

damages

periodic payments, future damages, 29—17, 18

defendant doctor as expert for self, 28—56; 29—46, 494

dental malpractice

anesthetic improperly administered, 28—7

limitation of actions, 29—180

oral surgery, 29—15

diagnostic negligence, 28—8, 441; 29—16, 169, 240, 244, 424, 446

directed verdict or judgment for defense, 28—56, 59, 157; 29—495

disclosure of confidential information, 28—393 to 418

expert opinion evidence

discovery rights of adverse party, 29—41 to 50

medical review panel's report, 28—68, 73, 81, 83 to 86

necessity, 28—55, 57, 59, 158, 159; 29—495

"obvious negligence" exception, 29—495

qualifications of experts, 29—300, 301

screening panel's findings, 29—170, 174, 180, 297, 419 to 421

standard of care, 28—57, 59, 157, 158; 29—227, 290, 300, 495

FTCA case, 28—130

foreign object left in body, 28—155

fractures, diagnosis and treatment, 29—244

"Good Samaritan" defense, 28—142, 143; 29—289

hospital negligence

equipment defective or improper, 28—11

incompetence of staff physician imputed, 29—17

injections, 28—10

proximate cause issues, 28—10

insurance forms, neglect in filing, 28—123, 126, 132

judicial notice issues, 29—383, 391 to 393

lack of privity defense, 28—119 to 133

limitation of actions

accrual of cause, 28—94; 29—203, 204

special statutory period, 29—203, 422

tolling limitations period, 28—94; 29—203, 204

limitation of liability, 28—68, 78, 82, 87; 29—240, 244, 421

malpractice screening panels

burden of proof, 29—299, 300

function of panels, 29—299

jurisdiction, 29—295, 301

medical malpractice, contributory negligence defense, 29—204

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### MEDICAL MALPRACTICE (Continued)

- osteopaths as defendants, 29—255
- psychiatrist as defendant
  - sexual or social involvement with patient, 28—94
  - suicide of patient, 28—10
  - third parties injured by patient, 28—411, 413; 29—23
- res ipsa loquitur, 28—157, 158
- respondeat superior issues, employee medical examinations, 28—129 to 131
- review panels
  - composition of panel, 28—67, 72, 78, 81
  - constitutional law issues, 28—66 to 88
  - standard of care, evidence, 28—68, 73
- screening provisions
  - inefficiencies criticized, 29—176, 177
  - joinder of medical and nonmedical parties, 29—170, 179, 181
  - jurisdiction issues, 29—169 to 181
- standard of care, 28—443
- sterilization operations, 28—10, 11
- strict liability rejected, 28—59
- tortfeasor's liability for subsequent malpractice, 29—170, 180
- warning patient, informed consent
  - drugs and vaccines, 29—382
  - extent of warning necessary, 28—57; 29—383
  - genetic disease, misdiagnosed, 28—8, 9; 29—446
  - psychosurgery, 29—298
  - written consent, 29—298, 300
  - X-rays, radiation injury to fetus, 29—493

### MENTAL PAIN

- big award against insurer, 29—73
- death case, emotional shock as cause, 29—434
- impact rule
  - abrogated, 28—185; 29—434, 443
  - retained, 28—187; 29—443
- "outrageous" conduct as cause
  - burden of proof, 29—497
  - cause of action not recognized, 28—186
  - elements, 29—87, 199, 497
  - extreme distress requirement, 28—497
  - impact rule, 28—187
  - insurer as defendant, 29—4 to 6, 73 to 103
  - motel case, 29—111
  - parental discipline not outrageous, 29—496
  - public disclosure of private facts, 28—290, 291
  - respondeat superior liability, 29—77, 111
  - telephone harassment, 28—293
- psychic injury without trauma
  - ad hoc determination, 29—426, 436
  - cause of action recognized, 28—91; 29—424, 434
  - defamation as cause, 28—461

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### MENTAL PAIN (Continued)

#### psychic injury without trauma (Continued)

- extrasensory empathy between twins, 29—432, 440, 445
- foreseeability issues, 28—91, 92, 180, 186; 29—22, 425, 433, 436, 511
- home builder's breach of warranty as cause, 29—510
- impact rule retained, 28—186; 29—443
- injury to near relative, 28—91, 179, 182, 185, 188 to 190; 29—22, 430, 441, 443
- judicial trends, 29—439
- products liability case, 29—441
- time and distance factors, 28—92, 181, 184, 185; 29—22, 430, 437, 438, 442, 444, 445
- unseen assault of plaintiff's child, 29—444
- "wrongful birth" cases, 29—439, 443, 446
- zone of danger rule, 29—441, 443

### MISCONDUCT OF COUNSEL

- appeals to prejudice or bias, 29—221, 225 to 228
- "guaranteed verdict" agreement issues, 29—237
- inadmissible evidence presented, 28—262, 267
- representing conflicting interests, 29—11, 12
- sanctions for misconduct, 28—263
- trial conduct disguising clients' interest, 29—242 to 245
- voir dire examination, 28—262; 29—483, 486

### MISCONDUCT OF JUDGE

- judicial notice improperly taken, 29—397 to 399

### MISCONDUCT OF JURORS

- circumstantial evidence, 28—482
- verdicts
  - excessive as evidence of bias, 28—482, 29—5, 77, 99
  - inadequacy as evidence of bias, 29—331

### MOTION PICTURES

- experimental evidence demonstrated, 29—462
- plaintiff's disability demonstrated, 29—328
- railroad accident, 29—461, 462
- relevancy issues, 29—328

### MOTORCYCLE ACCIDENTS

- automobile-motorcycle collisions, 28—265
- contributory negligence, 28—265
- products liability, 28—432
- property possessor's liability, 29—65

## N

### NECK INJURY

- liability without damages, 28—297

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### NERVE INJURY

medical evidence, 28—156

### NEUROSES AND PSYCHOSES

big award, 28—379

excessive award, 28—94

medical evidence

injury to near relative as cause, 28—90, 179, 183, 185

permanency of condition, 28—380

psychiatric malpractice as cause, 28—94

psychologist, 28—185

traumatic causation, 28—195, 380; 29—524

### NEW TRIAL

abuse of discretion, grant as, 29—204

erroneous exclusion or admission of evidence as grounds, 28—62; 29—243, 245,  
258, 266, 269, 271, 272, 284, 286

separate trial, denial as grounds, 29—248

verdict against weight of evidence, discretion of trial judge, 29—300

### NO-FAULT MOTOR VEHICLE INSURANCE

collateral source benefits, 28—20

constitutionality of statutes, 28—20

construction of statutes, 28—20, 21

loss of earnings, 28—21

medical expense coverage, 28—20, 21

multiple coverages, priority issues, 28—20

restrictions on tort actions

medical threshold issues, 29—59

"serious injury" issues, 29—195

subrogation issues, 28—20

tortious claims handling, 28—20

## O

### OPENING STATEMENT

products liability case, 29—223

## P

### PAIN AND SUFFERING, DEATH

conscious suffering of decedent

comparison of awards, 28—93

medical evidence, 28—93

time factor, 28—93

excessive award, 28—90

### PAIN AND SUFFERING, PERSONAL INJURY

big award, 28—494

excessive award, 28—96

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### **PAIN AND SUFFERING, PERSONAL INJURY (Continued)**

liability without damages, 28—395  
medical evidence, aggravation of pre-existing condition, 28—98  
small awards adequate, 28—192, 195, 495

### **PARALYSIS**

amusement device accidents, 28—344, 346  
big awards, 28—2, 3, 10; 29—105, 325  
medical malpractice as cause, 28—10  
motion pictures demonstrating effect, 29—328  
products defects as cause, 28—2, 3

### **PHOTOGRAPHIC EVIDENCE**

color pictures, medical treatment demonstrated, 29—327  
injuries and disabilities demonstrated, hospital photographs, 29—327  
invasion of privacy issues, 28—399, 400, 407, 408, 417  
prejudicial photographs, gruesomeness, 29—327

### **PLEADING**

affirmative defenses, 28—249, 251, 253, 254; 29—454  
amendment of pleadings  
    conforming to evidence, 28—300  
    right to amend, 28—353  
    strategy decisions, 29—455, 464  
dismissal, failure to state cause or defense, 28—180, 183, 187  
emotional trauma cases, 28—180, 183, 187

### **POLICE**

defamation actions, officers as plaintiffs, 28—476 to 478  
injury to police officer  
    apportionment of damages, 28—197  
    assumption of risk, "fireman's" rule, 29—401  
    automobile-motorcycle accident, 28—265

### **PRENATAL DEATH**

stillborn child, 28—9

### **PREPARATION FOR TRIAL**

instructions, preparation of, 29—336 to 340  
railroad accident cases, 29—450, 462 to 465

### **PRESUMPTIONS**

competency of witnesses, 29—310  
constitutionality of statutes, 28—70  
damages from defamation per se, 28—384  
rear-end collision, following driver's negligence, 28—62

### **PRETRIAL**

instructions conference, 29—337, 338  
judicial notice, requests and opposition, 29—387  
settlement negotiations, 29—371, 372, 465  
voir dire examination, scope of inquiry, 29—472, 474, 480

(References are to volume and page numbers)

### **PRISONER'S LITIGATION RIGHTS**

medical malpractice, 28—131

### **PRIVACY**

commercial exploitation

definition and elements, 29—198

entertainer as plaintiff, 28—292

literary works, 28—290

newsworthiness as excuse, 28—290

physicians as defendants, 28—399, 400, 407, 410, 417

waiver issues, 28—417

constitutional law issues, 28—280, 281, 291, 292; 29—198

damage, nominal award adequate, 28—498

deceased persons, 28—290; 29—501

"false light" actions, 28—288, 290, 291

intrusion cases, 28—496; 29—197

malice or recklessness as element, 28—288, 291, 292

motel owner's liability, intrusion by employee, 29—111

newsworthy event justification, 28—280, 288 to 291

physicians as defendants, actions by patients

commercial exploitation, 28—399, 400, 407, 410, 417

disclosure to spouse, 28—406, 414

intrusion case, 28—408

"private fact" disclosures, 28—406

public interest justification, 28—410 to 414

waiver issues, 28—415 to 417

public disclosure issues, 28—279, 283

rape victim, disclosing identity, 28—280

relational right not recognized, 29—501

right of privacy not recognized, 29—88

telephone company as defendant, 28—282, 293 to 295

television broadcaster as defendant, 28—278, 280, 288 to 293

### **PRIVILEGED COMMUNICATIONS**

Federal Rules of Evidence, State law applied, 28—397

physician-patient privilege

common-law rule, 28—395

court-ordered disclosure, 28—294, 397

disclosure required by law, 28—410

ethics codes, 28—395, 404

spouses of patients, 28—414

statutes creating, 28—393, 395

waiver issues, 28—415 to 417

psychiatrist-patient privilege

life insurance claim as waiver, 29—395

third persons endangered, duty to warn, 28—413

### **PRODUCTS LIABILITY**

advertising of product, warranty by advertising, 28—339, 345

amusement devices

automatic pitching machine, 28—338



## INDEX OF SUBJECTS

(References are to volume and page numbers)

### PRODUCTS LIABILITY (Continued)

#### amusement devices (Continued)

- fencer's mask, 28—332
- golf cart, 28—320
- golf training device, 28—344
- gym bar, 28—346
- hockey helmet, 28—345
- sliding board, 28—343
- snowmobile, 28—316
- swimming pool, 29—207
- trampoline, 28—344, 433

assumption of risk defense, 28—22, 332, 340, 342, 344, 347, 427 to 434

#### automobile products

- brakes, 28—2
- design defects, 28—1, 2, 373, 374, 430, 433; 29—18, 216, 238, 326
- fuel tank, 28—1
- gear shift, 28—375, 430
- seat belts, 29—21
- steering gear, 28—2, 373, 374
- tires, 28—447

#### aviation products

- design liability, 28—324, 326, 374, 376, 437; 29—61
- expert held incompetent, 29—63
- state of the art defense, 28—374

beverage products, exploding bottle case, 28—371

birth control devices, 29—489

changed condition defense, 28—421, 428, 429, 433

circumstantial evidence, 28—373, 430

cleansers, warning by manufacturer, 28—316

#### contributory negligence

- custom and habit evidence, 28—425
- patent danger issues, 28—420 to 438

costs of litigation, expert's fees and expenses, 29—191

criminal actions against manufacturers, 28—19; 29—20

damages, punitive, 28—327

#### design liability

- accident-free use defense, 29—207, 208
- accidents suffered by others, 29—209
- alternative or competitive design, 28—310, 322, 338, 345, 422, 425, 433, 437; 29—217
- automobile products, 28—1, 2, 430, 433; 29—216
- conformity to industry standards, 28—305, 310, 315, 320, 321, 328, 334, 341, 345, 374
- crashworthy car, duty to design, 29—238, 258, 469
- expert evidence, 28—304, 320, 338, 341; 29—217
- foreseeability of injury, 28—1, 2
- household appliances and equipment, 28—306
- industrial machinery, 28—310, 313, 325, 364, 372, 374, 375
- patent danger issues, 28—420 to 438
- post-accident design change, 29—326

DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

**PRODUCTS LIABILITY (Continued)**

design liability (Continued)

- public policy, 29—326, 327
- safety standards, reliance on, 29—217
- "second collision" liability, 29—216
- state of the art, 28—315, 320, 321, 324
- surgical implants, 28—321
- directed verdict or judgment for defense, 28—333, 334, 344, 346, 347
- drugs and vaccines
  - warning, obligation of manufacturer, 29—21, 272
- experimental evidence, 28—449
- expert evidence
  - alternative design feasibility, 28—422
  - automobile products, 28—448, 449
  - impeachment, scope allowed, 29—216
  - necessity, 28—320
  - opinions held inadmissible, 29—61
  - state of the art, 28—304, 320
- farm machinery, corn picker, 28—435
- firearms, 28—3
- flammable products
  - camp stove fuel, 28—434
  - chemical compound, 28—319; 29—28
  - paint, 28—436
- foreseeability of injury, 28—1, 372, 376, 420 to 438; 29—207 to 209
- governmental studies and proposals, 28—18, 19
- household appliances and equipment
  - camp stove, 28—306
  - lawn mower, 28—435, 436
- increase in litigation, 28—18
- industrial machinery and equipment
  - design liability, 28—364, 372, 374, 375
  - hydraulic lift, 28—325
  - meat grinder, 28—321
  - patent danger issues, 28—420, 422, 424, 427 to 438
- inherently dangerous products, 28—449, 450
- joinder of manufacturers and health care providers, malpractice screening panel's jurisdiction, 29—179
- lack of notice defense, 29—489, 490
- misuse defense
  - abuse, 28—373
  - disregard of warnings, 28—373
  - patent-latent defect issues, 28—340, 344, 374, 420 to 438
- proximate cause, 28—2
- res ipsa loquitur, 28—449, 451, 452; 29—327
- safety standard code evidence, 28—305, 306, 318
- state of the art defense
  - admissibility and relevance, 28—308, 313
  - conforming to industry standards, 28—340, 341, 345
  - customs of industry, 28—305, 307, 314, 320, 326, 328

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### PRODUCTS LIABILITY (Continued)

#### state of the art defense (Continued)

- definitions and elements, 28—307
- statutes recognizing, 28—307, 329
- unavoidably unsafe products, 28—317
- statutes controlling actions, Michigan, 29—19
- surgical implants, 28—321
- toy products, 28—375, 430, 434

### PROFESSIONAL LIABILITY

#### accountants

- financial reports not verified, 28—16, 17; 29—14
- privacy issues, 29—14

#### architects

- failure to supervise, 29—14
- privacy issues, 29—14
- warranty action invalid, 29—15

#### clergymen, negligent counseling, 29—15

#### morticians, embalmers and funeral directors

- contract action, 28—188
- mental pain, 28—188

#### surveyors

- professional association's standards, effect, 29—500

#### veterinarian, maltreatment of pet, 28—17

### PROPERTY POSSESSOR'S LIABILITY

#### control of premises issues, 28—359

#### invitee's rights and duties

- duty of invitor, 28—51, 359
- foreseeability, 28—275

#### proximate cause issues, 28—51

#### trespasser's rights and duties, children, 28—159

### PROXIMATE CAUSE

#### automobile insurance cases, 29—53, 68

#### burden of proof, 28—52

#### death case, 28—352

#### dramshop liability, 28—261

#### property possessor's liability case, 28—50

## R

### RAILROAD ACCIDENTS

#### crossing accidents

- contributory negligence, 29—456
- experimental evidence, 29—461, 462
- expert evidence, 29—457, 458
- hazardous condition, 29—457
- indemnity or contribution, 29—453
- lookout issues, 29—451, 460 to 463

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### RAILROAD ACCIDENTS (Continued)

#### crossing accidents (Continued)

motion picture evidence, 29—462

proximate cause issues, 29—456

signals by railroad issues, 29—56

### REAL ESTATE

builder's and vendor's liability, limitation of actions, 28—357

#### home builder's or vendor's liability

caveat emptor doctrine, 28—435, 454; 29—518

caveat venditor doctrine, 29—520

condition of land itself, 29—518 to 520

fault irrelevant, 29—520

nonprofessionals, 29—517, 518

strict liability rejected, 28—454

trends, 29—511

warranty action, 28—22

#### warranty actions

condition of land itself, 29—518 to 520

condominiums, 29—514, 516, 518

express warranty or disclaimer, 29—512, 514 to 516

fitness, habitability or workmanship, 28—22

habitability issues, 29—508, 515, 519, 520

lack of notice defense, 29—509

limitation of actions issues, 29—505, 507, 514 to 516

mental anguish of purchaser, 29—510

mitigation issues, 29—270, 520

privity issues, subsequent purchasers, 29—507, 513, 516

### RECREATION, RESTAURANT AND TAVERN CASES

park, 29—204

private swimming pool, 29—207

### RELEASE OF LIABILITY

#### "guaranteed verdict" agreements

champerty and maintenance issues, 29—233 to 237, 245

ethical questions, 29—237, 245

secrecy condemned, 29—246

#### setting release aside

burden of proof, 28—274

failure to read release no excuse, 28—274

### RES IPSA LOQUITUR

control by defendant, 28—452

definition and elements, 28—449

liberalized use disapproved, 28—451

medical malpractice case, 28—155

products liability cases, 28—447; 29—327

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### RESPONDEAT SUPERIOR

- assault by servant
  - propensity to violence, 29—524
  - punitive damages, 29—524, 525
- insurer's liability for private adjuster's torts, 29—357
- medical malpractice cases, 28—123, 128 to 131
- privacy invaded by employee, 29—111
- scope of employment issues, 28—381; 29—77, 79, 101, 112

## S

### SCAFFOLD ACCIDENTS

- products liability case, 28—436

### SCHOOL AND SCHOOLYARD ACCIDENTS

- foreseeability issues, 29—23
- lack of supervision issues, 29—23, 169
- school-sponsored sports activities, 28—335, 346, 379

### SKULL FRACTURE AND BRAIN INJURY

- big award, 28—379
- medical evidence
  - closed-head brain injury, 29—524
  - permanency and rehabilitation, 28—380
  - personality change, 28—379; 29—524
- medical malpractice case, 29—181
- products liability case, 28—345
- school accident case, 29—169

### SPECIAL ISSUES

- contributory negligence, 28—163; 29—413
- controlling over general verdict, 29—414
- proximate cause, 28—150, 163

### SPECTATOR ACCIDENTS

- assumption of risk defense, 28—347

### STIPULATIONS

- good faith purchase of stolen vehicle, 28—167, 168, 175
- lost earnings, 28—192
- market value of automobile, 28—168
- medical evidence, 28—157
- medical expenses, 28—192, 491
- property damage, amount, 28—488

### STOREKEEPER'S LIABILITY

- assault by third parties, 28—275
- foreseeability issues, 28—276

## DEFENSE LAW JOURNAL—VOLS. 28 AND 29

(References are to volume and page numbers)

### STRICT LIABILITY

medical malpractice, doctrine rejected, 28—59

### SUBROGATION

fire insurer as plaintiff, 28—243

### SUMMARY JUDGMENT

absence of duty as grounds, 28—160, 275

affidavits used, 29—499

assumption of risk by police officer established, 29—401

depositions used, 29—496

stipulations used, 28—157

### SWIMMING OR DIVING ACCIDENTS

property possessor's liability, 28—159

## V

### VERDICTS

consistency of verdicts, 29—414

less-than-unanimous verdicts, 29—206

### VIDEOTAPE

deposition use, 29—189, 195

### VISION IMPAIRMENT OR LOSS

products liability cases, 28—332, 345, 375, 430, 434

### VOIR DIRE EXAMINATION OF JURORS

acquaintance with party or counsel, 29—479, 486

appellate record, 29—471, 473

bias for or against cause, 29—470, 473, 476, 483 to 486

concealment or nondisclosure, 29—482

court or counsel conducting inquiry, 29—470, 480 to 483

insurer advertising, effect, 29—472, 474, 479

liability insurance, 28—262; 29—472, 483 to 485

monitor duty of trial judge, 29—476, 480, 482

nondisclosure held harmless, 29—482

pretrial publicity, effect, 29—470, 479, 481

purpose of inquiry, 29—471, 477

## W

### WEATHER EVIDENCE

aviation accidents, 29—63

### "WHIPLASH" INJURY

small award inadequate, 29—329

### WITNESSES

adverse party as witness, 29—37

## INDEX OF SUBJECTS

(References are to volume and page numbers)

### WORKMEN'S COMPENSATION

- back injury cases, 28—119, 121, 128
- cardiovascular disease, 28—360
- common-law action barred, 29—259
- delayed notice defense, 28—360
- electrical accidents, 28—455
- indemnity actions against employers
  - active versus passive negligence test, 28—455, 457
  - contractual indemnity, 29—453
  - exclusive remedy provisions as bar, 28—457
- medical evidence, permanency or rehabilitation, 28—119, 121, 128
- medical malpractice, examining physician's standard of care, 28—119, 121, 128, 133
- third party action
  - carrier's lien for benefits, 28—455
  - indemnity by employer, 28—455, 457

## X

### X-RAYS

- back and spine, 28—98





